PLEADING—ANSWER—GENERAL DENIAL RENDERED INEFFECTIVE BY THE USE OF A SPECIFIC DENIAL

The plaintiff in a negligence action alleged she was operating her automobile in a northerly direction along Miami Road in Hamilton County, Ohio, approaching an intersection and that her rate of speed did not exceed twenty-five miles per hour. The plaintiff also alleged that the defendant, "through Chester Petrie, its agent and employee who was then and there working within the scope of his employment, was operating a Sohio Gasoline truck over and along Galbraith Road aforesaid in an easterly direction" and that while plaintiff was proceeding through the intersection "the defendant suddenly and without warning, without stopping before entering the intersection, aforesaid, drove said truck with great force into the front of plaintiff's car striking same with the right front side of defendant's truck causing injuries to the plaintiff."

In its amended answer, the defendant admitted its corporate existence, that Galbraith Road and Miami Road existed as described and that on October 2, 1951, "a collision occurred between an automobile driven by Lucia E. Hermanies and defendant's truck operated by Chester Petrie at the intersection of Miami and Galbraith Roads." These admissions were followed by the statement that "defendant denies each and every other allegation of plaintiff's petition, not hereinbefore admitted to be true, and specifically denies that the truck driven by Chester Petrie entered said intersection suddenly and without stopping. Defendant further specifically denies that plaintiff was injured to the extent and suffered damages in the amount claimed in her petition."

At the trial, the defense counsel's rather lengthy and detailed opening statement gave no indication that the defendant disputed the allegation that defendant's truck was being operated at the time in the course of the defendant's business by its agent or employee. As the trial proceeded, the plaintiff rested her case without offering any evidence on the averment that Petrie was acting for the defendant at that time. No motion for directed verdict or judgment was made; nor was the attention of the court called in any other manner to the failure of the plaintiff to offer evidence upon all the elements of her case.

Defendant proceeded with its defense and rested without placing Petrie on the stand, notwithstanding the statement of defense counsel in his opening statement that Petrie would testify. In its general charge, the court did not submit the issue of Petrie's authority to the jury. The court entered judgment for the plaintiff in accordance with the verdict returned by the jury. The defendant's motion for judgment notwithstanding the verdict, based upon plaintiff's failure to prove the agency, was overruled. Upon appeal to the Court of Appeals, affirmed. *Held,* both special and general denials in the same answer are improper; a gen-

eral denial is no broader than and puts in issue no more than the accompanying specific denial. *Hermanies v. Standard Oil Co.*, 102 Ohio App. 143, 131 N.E. 2d 233 (1955).

A general denial usually serves to put all the allegations of a complaint in issue.[1] A common form of the general denial includes a denial of "each and every allegation" of the plaintiff's petition.[2] A frequently used modification is the practice of combining a general denial with one or more specific admissions.[3] Although this practice has been criticized as a mongrel form of answer,[4] illegitimate,[5] and conducive to uncertainty, confusion, and inconsistency,[6] it is now frequently used and its validity seems to be clearly established.[7] The problem in the principal case was not the use of specific *admissions* with a general denial, but the use of specific *denials* with a general denial.

If the defendant in the instant case had limited itself to a general denial with specific admissions the court might have reversed on the grounds that the defendant's general denial placed the employee's authority in issue, that the plaintiff had the burden of proving the existence of such authority, and that she failed to satisfy this burden. However, when, as in the instant case, a general denial is limited by specific denials, the allegation of agency, not having been specifically denied, is impliedly admitted.

In contradistinction to a general denial, the purpose of a specific denial is to put in issue only certain specific allegations of a petition, thereby narrowing the issues and concentrating the evidence on the material facts actually in dispute.[8] A common form of a specific denial establishes the facts following the words "defendant specifically denies that. . . ." Frequently, in those jurisdictions where numbered paragraphs are proper, it is sufficient to merely state that the defendant denies the allegations contained in a designated numbered paragraph of the complaint.[9]

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[1] Bakas v. Casparis Stone Co., 14 Ohio N.P. (n.s.) 577, 585 (1913).

[2] Creighton v. Kellermann, 12 Ohio Dec. Rep. 788 (1857); CLARK ON CODE PLEADING, 584 (2d ed. 1947).

[3] This modification is exemplified in the pleadings of the principal case, wherein defendant admitted its corporate existence, the discription of certain roads, the occurrence of a collision, and then denied "each and every other allegation of plaintiff's petition, not hereinbefore admitted to be true."

[4] POMEROY ON CODE REMEDIES §524 (5th ed. 1929).

[5] Converse v. Panhard Motors Co., 21 Ohio N.P. (n.s.) 345 (1918). The strict interpretation taken by Judge Kinkead, Common Pleas Court of Franklin County, in this case, appears to be the only Ohio case holding specific admissions improper.

[6] Bakas v. Casparis Stone Co., *supra* note 1 (dictum).

[7] *Ibid.;* Aleshire v. Pittsburgh C.C. & L. R. Co., 25 Ohio N.P. (n.s.) 215 (1923).

[8] Ridenour v. Mayo, 29 Ohio St. 138 (1876); Powers v. Armstrong, 36 Ohio St. 357 (1881).

[9] CLARK ON CODE PLEADING, 587 (2d Ed. 1947).

The proper content of an answer is governed by §2309.13 of the Ohio Revised Code, which provides in part:

> The answer shall contain:
> (A) A general or specific denial of each material allegation of the petition controverted by the defendant. . . .

This language has created interpretation problems, largely centered around the meaning of the conjunction "or,"[10] but also extending to the definition of the word "specific."[11]

The importance of these interpretations becomes paramount when it is realized that many defendants have adopted the practice of combining general and specific denials, as well as specific admissions, in their answers. This practice is exemplified by the principal case. The explanation of this practice can most likely be traced to a pleader's desire to emphasize his denial of certain basic allegations of the plaintiff's petition before the court and jury.

Thus, in the principal case the defendant apparently felt the need to emphasize his denial of Petrie's negligence, and Lucia Hermanies' injuries. It may also have felt that a special denial of Petrie's agency might have been detrimental because of the probability that plaintiff could prove it, and thereby weaken the defense in the eyes of the jury. However, the alternative of a general denial alone might have weakened the desired emphasis upon the defenses of no negligence and inconsequential injuries. Faced with this dilemma, the defendant, in the hope that he could "eat his cake and keep it too," erroneously adopted the unauthorized practice of incorporating both the special and general denial into its answer.

The Ohio reported decisions, without any known exception, appear to have held this type of pleading to be improper, and in violation of the provisions of §2309.13 of the Ohio Revised Code. There is almost complete agreement that these provisions should be interpreted to mean that a denial must be either general *or* specific, but cannot be both.[12]

Accordingly, it would seem that the decision of the principal case is in complete agreement with early Ohio cases, and serves to reaffirm a fundamental rule of Ohio pleading that has remained unmentioned in the Ohio reported decisions for over thirty years. It is a good rule, and its strict enforcement by the courts should result in more concise defensive pleading. Although this rule has probably been frequently violated in the past, and may continue to be violated in the future, the principal case should serve as a reminder of the grave danger which attends violation of this rule of pleading.

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[10] See Wood v. Connecticut Fire Insurance Co., 17 N.P. (n.s.) 273 (1913).

[11] See editorial by John G. White, 17 Ohio L. Rep. (n.s.) 17 (1919).

[12] Creighton v. Kellerman, *supra* note 2; Wood v. Connecticut Fire Insurance Co., *supra* note 12. But see editorials by John G. White, 17 Ohio L. Rep. (n.s.) 17 (1919), 22 Ohio L. Rep. (n.s.) 711 (1925).